



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 22, 2022

IN THE MATTER OF:

Appeal Board No. 621384

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective March 6, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 1, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked from September 2018 through March 5, 2021 as a case manager for a women's and children's shelter run by a nonprofit organization. The claimant was diagnosed with cancer in 2019 and underwent surgery in August of that year. Once the COVID-19 pandemic started, the claimant worked from home from April to June 2020. During this period, the claimant met with clients by FaceTime. When staff returned to the office, the employer did not establish any infection control protocols, so the shelter's program director established her own protocols. The program director provided masks, gloves and hand sanitizer, and she had the maintenance staff wipe down doorknobs and sanitize the building twice a day. She directed staff to hold any in-person meetings with clients in the community room instead of the staff

members' offices so staff would have room for 10 feet of social distancing. The program director also directed staff to wear masks and gloves, and she had signs posted at the entrances to the administrative services office and social services office stating that no client could enter without a mask. Compliance with the mask requirement depended on everyone's cooperation, as the program director was not able to supervise every moment and enforce the requirement.

In November 2020, the claimant was diagnosed with a lump in her breast. She also had COPD. In January 2021, an increasing number of staff were being diagnosed with COVID. Clients also were getting COVID. Multiple times, the program director told staff that they should get tested for COVID because a coworker had tested positive. The claimant got tested three or four times in January and a similar number of times in February. The claimant talked with the program director about her concern about the spike in COVID cases at the workplace, especially as the claimant's immune system was compromised. Clients and staff did not always wear masks as directed. The program director observed that the claimant seemed unhappy and that the claimant also had a lot of upcoming medical appointments. She suggested that the claimant apply for medical leave.

Approximately four or five days later, on February 19, 2021, the claimant submitted a letter of resignation, effective March 5, 2021, because she felt the employer was not providing a safe work environment.

OPINION: The credible evidence establishes that the claimant quit her job because she felt the employer was not providing a safe work environment for her in the context of the COVID-19 pandemic. Although the program director provided personal protective equipment including masks, gloves and hand sanitizer, she was unable to enforce her directive that staff wear masks and that clients do the same in certain areas of the shelter. The program director was aware of the claimant's medical issues and compromised immune system. When the claimant expressed concern, in mid-February 2021, that a growing number of staff were contracting COVID, the program director did not offer any remedy that would safeguard the claimant's safety while enabling her to continue to work. Instead, the program director suggested that the claimant take a leave of absence. A leave of absence would not have changed the situation at the worksite, however, as the program director and the employer did not indicate that they would take any action to increase compliance with the mask directive. We find that the claimant advised the employer of her reasonable fears for her physical health. The employer's failure to enforce the program

director's own health and safety protocols, and failure to take appropriate corrective action once the claimant presented her concerns, established good cause for the claimant to quit. Accordingly, we conclude that the claimant's employment ended under non-disqualifying circumstances, and the claimant is allowed benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective March 6, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER